



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 20-01813
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2024

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated security concerns raised by his delinquent debts and personal conduct. National security eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on September 10, 2019. On October 29, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on December 2, 2020, and elected to have a hearing. (Answer) The case was assigned to me on April 12, 2022. On April 18, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant the hearing was scheduled for June 1, 2022. I convened the hearing as scheduled via video teleconference.

I marked the April 29, 2022 case management order as HE I; Government’s exhibit list as HE II; and Government’s February 3, 2021 disclosure letter as HE III. Government Exhibits (GE) 1 - 4 were admitted without objection, and Applicant testified. At the hearing, Applicant requested the opportunity to submit post-hearing documentation, and I held the record open until June 22, 2022. He timely submitted Applicant Exhibits (AE) A – I, and they were admitted without objection. I marked my June 22, 2022 email to both parties,

which included a list of Applicant's exhibits, as HE IV, and Applicant's response as HE V. DOHA received the transcript on June 21, 2022, and the record is closed.

Procedural Matters

At the hearing, the Government withdrew SOR ¶¶ 1.a - 1.c, and 2.f, without objection. Additionally, prior to the hearing, the Government marked and provided four additional exhibits to all parties. At the hearing, these documents were not offered; however, they are in the file and listed on HE II. I did not consider them in reaching my decision. (Tr. 11-12)

Findings of Fact

Applicant, 45, has been married to his wife since 2003, and they have four children, ages 20, 16, 14, and 12. He graduated from high school in 2002. He has completed approximately 110 college credits toward a Bachelor of Science in business. He has worked for his employer, a federal contractor, as a program manager since January 2018, and has held a security clearance since 2002. He honorably served on active duty in the U.S. Air Force from 2002 to 2010, and in the Army National Guard (ARN) from 2015 to August 2018 and November 2018 to present. His current rank is sergeant (E-5). He deployed to Iraq for four months in 2004 and for an eight-month period in 2016 to 2017. He deployed to Afghanistan for two months in 2009 and from January 2012 to February 2013. (GE 1- 2; AE D; Tr. 10, 17-21, 26, 71-75)

Under Guideline F, the SOR ¶¶ 2.a through 2.g (2.f withdrawn) alleged Applicant has six delinquent debts totaling \$54,345. Under Guideline E, the SOR ¶ 1.d (¶¶ 1.a through 1.c. withdrawn) alleged he falsified his SCA by deliberately failing to disclose the debts alleged under Guideline F. He denied all allegations except for SOR ¶ 2.a. (Answer)

Applicant's financial problems arose in 2013. He was unemployed for two months as he transitioned between two DOD contractors, additionally, his pay decreased from \$205,000 annually to \$73,000. Since May 2007, his salary is the family's only source of income. He also attributes his financial issues to his spouse's mishandling of their finances by opening accounts while he was deployed. In addition to the debts alleged in the SOR, Applicant resolved several smaller debts before the issuance of the SOR. (Answer; GE 1-2; Tr. 13, 22, 54)

Applicant and his wife began addressing their delinquent accounts to qualify for a home mortgage. In March 2017, Applicant hired a credit repair company (CRC) recommended by his then facility security officer (FSO). He paid CRC an initial fee of \$99.95 and a final payment of \$1,500 to resolve the debts alleged in SOR ¶¶ 2.b – 2.e and 2.g. After the hearing, he provided a letter from CRC, due to the passage of time, CRC was unable to provide specifics regarding Applicant's account and the resolution of his debts. They purchased a home in January 2018 for \$406,596. (GE 2; AE F; AE G at 45; Tr. 13, 33, 48-49, 59-63)

SOR ¶ 2.a is an auto loan that was charged off in 2014. The deficiency balance for the voluntary repossession was \$10,508. In Applicant's 2020 response to the SOR,

he indicated he was working to resolve the debt. He was in contact with the creditor after the repossession and made inconsistent payments for several years. He settled the outstanding balance of approximately \$8,800 in 2021 for between \$3,000 and \$4,000. This debt no longer appears on his credit bureau reports. (Answer; GE 2 at 9-10; GE 3 at 2; GE 4 at 10; AE G, H; Tr. 21-25, 27-31)

SOR ¶ 2.b is a consumer debt for furniture that was opened in April 2013. Applicant stopped paying the debt in approximately May 2014, and it was charged off in the amount of \$2,204. It was included in the credit repair program and no longer appears on his CBRs. (Answer; GE 2 at 10; GE 4 at 9; AE G, H; Tr. 32, 38)

SOR ¶ 2.c is a credit card that was opened in 2011 for two major purchases (to fix a car and pay for Applicant's wife's medical issue). The debt was charged off in the amount of \$8,709. It was included in the credit repair program and no longer appears on his CBRs. (Answer; GE 2 at 8; GE 4 at 9; AE G, H; Tr. 40-43)

SOR ¶ 2.d is a consumer debt for furniture that was opened in February 2014. Applicant moved from State A to State B prior to this opening of this account; therefore, he believes it is either a duplicate of SOR ¶ 2.b or fraudulent. The two accounts have different account numbers, and SOR ¶ 2.d was placed for collection in the amount of \$3,439. However, the debt was included in the credit repair program and no longer appears on his CBRs. (Answer; GE 2 at 7-8, 10; GE 4 at 10; AE G, H; Tr. 43-47, 75)

SOR ¶ 2.e is a credit card that was opened in November 2008, and it was charged off in the amount of \$10,135. It was included in the credit repair program and no longer appears on Applicant's CBRs. (Answer; GE 4 at 10; AE G, H; Tr. 47-49)

SOR ¶ 2.g is an auto loan that was charged off in 2013. The deficiency balance for the involuntary repossession was \$24,350. Applicant purchased the vehicle in June 2013 for approximately \$70,000, after missing one payment of \$1,000, the vehicle was repossessed in December 2013. It was included in Applicant's credit repair program and no longer appears on his CBRs. (Answer; GE 2 at 10-11; GE 4 at 11; AE G, H; Tr. 49-55)

Applicant owned his own consulting business from 2020 to 2021 to earn extra income for his family, and he earned approximately \$7,500 from this venture. At the time of the hearing, he had no new delinquent debts, which is reflected in his most recent CBRs. He paid and filed his federal and state income taxes in a timely manner. At the time of the hearing, he earned \$90,000 annually from his full-time job and approximately \$11,000 from his ARN service. He had \$13,000 in savings, \$5,500 in checking, and \$15,000 in a retirement account. He followed a written budget and has sought no additional credit counseling other than the counseling discussed above. (GE 1-2; Tr. 25-26, 65-69, 80)

In Applicant's September 2019 SCA, he did not disclose any financial issues. During his October 2019 personal subject interview with a government investigator, Applicant was confronted with the debts alleged in the SOR. He told the investigator he did not intend to be deceptive and believed he had to disclose unresolved debts. He did

not mention the CRC program during his interview. He testified he did not list the debts in his SCA, because he believed his delinquent debts were resolved when he completed his 2019 SCA, and the requirement was to disclose “current accounts.” He did not intend to be deceptive and was unaware his delinquent debts were still appearing on his CBR as he did not pull a CBR prior to completing his 2019 SCA. He disclosed other derogatory information on his SCA with potential adverse consequences during the security clearance adjudication process, including a February 2013 job termination for cause and a 2013 arrest alleged in SOR ¶ 1.a. (GE 1 at 20, 44; GE 2 at 8; Tr. 56-65)

Applicant’s letters of recommendation from his Officer-in-Charge in the ARN and his current supervisor applaud him for his leadership, strong work ethic, professionalism, and integrity. Applicant’s awards and decorations from his service in the Air Force (AF) and ARN include: Army Commendation Medal; AF Commendation Medal; Army Achievement Medal; AF Achievement Medal; Korean Defense Service Medal; AF Overseas Ribbon Short Medal; AF Longevity Service Medal (with 1 oak cluster); AF Expeditionary Service Ribbon (with gold border and 2 oak leaf clusters); USAF NCO PME Graduate Ribbon; and AF Training Ribbon. At the time of the hearing, he was scheduled to graduate from Officer Candidate School in August 2022, and he had previously received the Distinguished Graduate Award for his military occupation training. (AE B - E; Tr. 76)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The concern under Guideline F (Financial considerations) is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (a) Inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and owed and is in compliance with those arrangements.

Applicant's 2013 period of unemployment and significant reduction in pay were contributing factors to his financial problems. He began working to resolve his debt at least two years in advance of completing his 2019 security clearance application. The CBRs in the record and the letter from CRC reflect he resolved several debts prior to the issuance of the SOR. Additionally, he retained CRC based upon the recommendation of his FSO, while working for a DOD contractor. He paid CRC, in good faith, almost \$1,600 to "resolve" his delinquent debts. He has no new delinquent debts, and he has worked part-time jobs consulting and in the ARN to contribute additional income to his family. He follows a written budget, and there are no indications he is currently living beyond his means.

Applicant has demonstrated mitigation under AG ¶¶ 20.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes the following condition that could raise a security concern and be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility trustworthiness, or award fiduciary responsibilities.

In this case, Applicant did not disclose any of his delinquent debts in his 2019 SCA. He denied intentionally falsifying his SCA. He credibly testified he misunderstood the question to believe he was required to disclose “current” delinquent accounts, not accounts that were years old. He also reasonably believed he did not have any delinquent accounts because he was able to obtain a sizeable mortgage believing that he could not have unpaid delinquent accounts to do so. While his failure to review a credit report before completing his SCA may have been negligent, it is not indicative of a failure to deceive or mislead the Government. Furthermore, he disclosed other derogatory information, which raised potential issues about his ongoing security worthiness.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Applicant’s finances are no longer in question, he has no new

delinquent debts, and sufficient savings to prevent an overextension. Additionally, I considered his military service, awards and decorations, and letters of recommendation, which all reflect favorably upon his integrity and credibility. Overall, he has demonstrated the actions of a responsible, reliable, and trustworthy person. I conclude he did meet his burden of proof and persuasion. He mitigated the security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraphs 1.a – 1.c: Withdrawn
Subparagraph 1.d: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraphs 2.a – 2.e: For Applicant
Subparagraph 2.f: Withdrawn
Subparagraph 2.g: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge